

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-O-13946
)	
JOHN HAYS GRIFFIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 220368,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent John Hays Griffin (respondent) was charged with failing to comply with all conditions attached to a disciplinary probation. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on July 12, 2002, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 12, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC served via certified mail was returned by the U.S. Postal Service. However, attached to the envelope was the certified mail return receipt, which bore the signature, "Limeale Brice." The NDC sent by regular mail was also returned by the U.S. Postal Service.

The State Bar also attempted to reach respondent by sending two letters to him by regular mail and by email. Additionally, a third letter was sent to respondent by email.

The State Bar also attempted to reach respondent at a telephone number he had used in a prior disciplinary matter and attempted to locate a current telephone number for respondent through directory assistance and internet searches. Additionally, the State Bar attempted to locate respondent through further internet searches and an attorney directory. Finally, as respondent is currently on disciplinary probation, the State Bar checked with respondent's probation deputy to see if she had more recent contact information for respondent.

Respondent failed to file a response to the NDC. On August 23, 2011, the State Bar properly served respondent with a motion for entry of respondent's default; the motion was filed

on August 24, 2011. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on September 9, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On April 5, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no disciplinary matters pending; (3) respondent has a record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on May 1, 2012.

Respondent has been disciplined on three prior occasions.³ On August 25, 2009, a public reproof with conditions was imposed for misconduct involving one client matter. Respondent failed to perform competently, failed to respond promptly to reasonable status inquiries, failed to promptly return unearned fees, and failed to release a client's paperwork as requested by the

³ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

client upon termination of employment. Respondent and the State Bar entered into a Stipulation Re Facts, Conclusions of Law and Disposition in this matter.

Pursuant to a Supreme Court order, filed on January 12, 2011, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for four years subject to conditions, including a suspension from the practice of law for the first 60 days of his probation. In the matter involving two clients, the parties stipulated that respondent failed to perform competently, failed to respond promptly to reasonable status inquiries, engaged in the unauthorized practice of law, failed to return an unearned fee, and failed to return a client file.

Pursuant to a Supreme Court order filed on September 28, 2011, respondent was suspended for two years, the execution of which was stayed, subject to conditions, including that he be suspended from the practice of law for a minimum of one year and that he remain suspended until the State Bar Court grants a motion to terminate his suspension.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

Case Number 11-O-13946 (Probation Matter)

Respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing, as alleged in the NDC, to comply with certain specified probation conditions attached to the disciplinary probation ordered by the Supreme Court in its Order filed on January 12, 2011.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the NDC was served on respondent at his membership records address by both certified and regular mail; the State Bar attempted to contact respondent by telephone, regular mail and email, contacted directory assistance and conducted internet searches, and checked an attorney directory;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent John Hays Griffin be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that John Hays Griffin, State Bar number 220368, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court